

AMENDED IN ASSEMBLY APRIL 16, 2001

AMENDED IN ASSEMBLY MARCH 29, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1424**

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**Introduced by Assembly Member Thomson**  
*(Coauthors: Assembly Members Aroner and Koretz)*

February 23, 2001

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An act to add Section 1374.51 to the Health and Safety Code, to add Section 10144.6 to the Insurance Code, and to amend Sections 5008.2, 5328, and 5332 of, and to add Sections 5012, 5013, 5150.05, and 14021.8 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, as amended, Thomson. Mental health: involuntary treatment.

Existing law, the Lanterman-Petris-Short Act, provides that when applying the definition of mental disorder for specified purposes, the historical course of the person's mental disorder, as determined by available relevant information about the course of the person's mental illness, shall be considered when it has a direct bearing on the determination of whether the person is a danger to others or to himself or herself or gravely disabled as a result of a mental illness. Existing law authorizes the hearing officer, court, or jury to exclude from consideration evidence it deems to be irrelevant because of remoteness of time or dissimilarity of circumstances.

This bill would instead require the hearing officer, court, or jury to exclude from consideration evidence it deems to be irrelevant because

of remoteness of time or dissimilarity of circumstances, and would broaden the types of information that are required to be included within the historical course of a person's mental illness to include the patient's medical records and psychiatric records. It would also require that relevant information, including information provided by the person's family about the historical course of a person's mental disorder be considered when determining whether probable cause exists to involuntarily detain a person for 72-hour treatment and evaluation.

This bill would provide that the fact that a person has been taken into custody under the Lanterman-Petris-Short Act may not be used in the determination of that person's eligibility for payment or reimbursement for mental health or other health care services for which he or she has applied or received under the Medi-Cal program, any health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 or any insurer providing health coverage doing business in the state.

Existing law authorizes the administration of antipsychotic medication by an agency or facility providing treatment to any person subject to detention, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to specified provisions.

This bill would require the agency or facility providing treatment to any person to acquire the person's medication history if the person is subject to detention for 72 hours on the basis he or she is a danger to himself or herself or others or is gravely disabled, or to extended periods of detention pursuant to professional evaluations of the person that he or she remains a danger to himself or herself or others or is gravely disabled or has suicidal tendencies.

*This bill would require the State Department of Mental Health to provide training and technical assistance to counties and their contractors and other individuals involved in making treatment and involuntary commitment decisions.*

Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health services.

This bill would prohibit a health care service plan, disability insurer, or, under the Medi-Cal program, the State Department of Health Services from utilizing any information regarding whether a person's psychiatric inpatient admission was made on a voluntary or involuntary



basis for the purpose of determining eligibility for claim reimbursement. Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The families of persons with serious mental illness find the  
4 Lanterman-Petris-Short Act system difficult to access and not  
5 supportive of family information regarding history and symptoms.

6 (b) Persons with mental illness are best served in a system of  
7 care that supports and acknowledges the role of the family,  
8 including parents, children, spouses, significant others, and  
9 consumer-identified natural resource systems.

10 SEC. 2. It is the intent of the Legislature that the  
11 Lanterman-Petris-Short Act system procedures be clarified to  
12 ensure that families are a part of the system response, subject to the  
13 rules of evidence and court procedures.

14 SEC. 3. Section 1374.51 is added to the Health and Safety  
15 Code, to read:

16 1374.51. No plan may utilize any information regarding  
17 whether an enrollee's psychiatric inpatient admission was made on  
18 a voluntary or involuntary basis for the purpose of determining  
19 eligibility for claim reimbursement.

20 SEC. 4. Section 10144.6 is added to the Insurance Code, to  
21 read:

22 10144.6. No disability insurer may utilize any information  
23 regarding whether a beneficiary's psychiatric inpatient admission  
24 was made on a voluntary or involuntary basis for the purpose of  
25 determining eligibility for claim reimbursement.

1 SEC. 5. Section 5008.2 of the Welfare and Institutions Code  
2 is amended to read:

3 5008.2. When applying the definition of mental disorder for  
4 the purposes of Articles 2 (commencing with Section 5200), 4  
5 (commencing with Section 5250), and 5 (commencing with  
6 Section 5275) of Chapter 2 and Chapter 3 (commencing with  
7 Section 5350), the historical course of the person's mental  
8 disorder, as determined by available relevant information about  
9 the course of the person's mental illness, shall be considered when  
10 it has a direct bearing on the determination of whether the person  
11 is a danger to others, or to himself or herself, or gravely disabled,  
12 as a result of a mental illness. The historical course shall include,  
13 but is not limited to, evidence presented by persons who have  
14 provided, or are providing, mental health or related support  
15 services to the patient, the patient's medical records, including  
16 psychiatric records, or evidence voluntarily presented by family  
17 members, or any other person designated by the patient. Facilities  
18 shall make every reasonable effort to make information provided  
19 by his or her family available to the court. The hearing officer,  
20 court, or jury shall exclude from consideration evidence it  
21 determines to be irrelevant because of remoteness of time or  
22 dissimilarity of circumstances.

23 SEC. 6. Section 5012 is added to the Welfare and Institutions  
24 Code, to read:

25 5012. The fact that a person has been taken into custody under  
26 this part may not be used in the determination of that person's  
27 eligibility for payment or reimbursement for mental health or  
28 other health care services for which he or she has applied or  
29 received under the Medi-Cal program, any health care service plan  
30 licensed under the Knox-Keene Health Care Service Plan Act of  
31 1975 (Chapter 2.2 (commencing with Section 1340) of Division  
32 2 of the Health and Safety Code), or any insurer providing health  
33 coverage doing business in the state.

34 SEC. 7. Section 5013 is added to the Welfare and Institutions  
35 Code, to read:

36 5013. The department shall provide training and technical  
37 assistance to counties and their contractors and other individuals,  
38 such as mental health professionals, law enforcement officials, and  
39 certification hearing officers involved in making treatment and  
40 involuntary commitment decisions. The training shall include

1 information relative to legal requirements for detaining a person  
2 for involuntary inpatient treatment ~~or community-assisted~~  
3 ~~outpatient care~~, including criteria for when a person may be  
4 considered to be gravely disabled, and methods for ensuring that  
5 decisions made regarding involuntary treatment as provided for  
6 beginning in Sections 5150 and 5250 direct patients toward the  
7 most effective treatment. The department shall include clients,  
8 parents, other family members, and advocates in the design and  
9 delivery of the training. The department shall develop a proposed  
10 curriculum and schedule for frequency with input from all the  
11 stakeholders in the mental health delivery system.

12 SEC. 8. Section 5150.05 is added to the Welfare and  
13 Institutions Code, to read:

14 5150.05. (a) When determining if probable cause exists to  
15 take, or cause to be taken, a person into custody pursuant to Section  
16 5150, any person who is authorized to take that person, or cause  
17 that person to be taken, into custody pursuant to that section shall  
18 consider available relevant information about the historical course  
19 of the person's mental disorder if he or she determines that the  
20 information has a reasonable bearing on the determination as to  
21 whether the person is a danger to others, or to himself or herself,  
22 or is gravely disabled as a result of the mental illness.

23 (b) For purposes of this section, "information about the  
24 historical course of the person's mental disorder" includes  
25 evidence presented by the person who has provided or is providing  
26 mental health or related support services to the person subject to  
27 a determination described in subdivision (a) and evidence  
28 presented by one or more members of the family of that person.

29 (c) This section shall not be applied to limit the application of  
30 Section 5328.

31 SEC. 9. Section 5328 of the Welfare and Institutions Code is  
32 amended to read:

33 5328. All information and records obtained in the course of  
34 providing services under Division 4 (commencing with Section  
35 4000), Division 4.1 (commencing with Section 4400), Division  
36 4.5 (commencing with Section 4500), Division 5 (commencing  
37 with Section 5000), Division 6 (commencing with Section 6000),  
38 or Division 7 (commencing with Section 7100), to either voluntary  
39 or involuntary recipients of services shall be confidential.  
40 Information and records obtained in the course of providing

1 similar services to either voluntary or involuntary recipients prior  
2 to 1969 shall also be confidential. Information and records shall be  
3 disclosed only in any of the following cases:

4 (a) In communications between qualified professional persons  
5 in the provision of services or appropriate referrals, or in the course  
6 of conservatorship proceedings. The consent of the patient, or his  
7 or her guardian or conservator shall be obtained before  
8 information or records may be disclosed by a professional person  
9 employed by a facility to a professional person not employed by  
10 the facility who does not have the medical or psychological  
11 responsibility for the patient's care.

12 (b) When the patient, with the approval of the physician,  
13 licensed psychologist, or social worker with a master's degree in  
14 social work, who is in charge of the patient, designates persons to  
15 whom information or records may be released, except that nothing  
16 in this article shall be construed to compel a physician,  
17 psychologist, social worker, nurse, attorney, or other professional  
18 person to reveal information which has been given to him or her  
19 in confidence by members of a patient's family.

20 (c) To the extent necessary for a recipient to make a claim, or  
21 for a claim to be made on behalf of a recipient for aid, insurance,  
22 or medical assistance to which he or she may be entitled.

23 (d) If the recipient of services is a minor, ward, or conservatee,  
24 and his or her parent, guardian, guardian ad litem, or conservator  
25 designates, in writing, persons to whom records or information  
26 may be disclosed, except that nothing in this article shall be  
27 construed to compel a physician, psychologist, social worker,  
28 nurse, attorney, or other professional person to reveal information  
29 which has been given to him or her in confidence by members of  
30 a patient's family.

31 (e) For research, provided that the Director of Mental Health or  
32 the Director of Developmental Services designates by regulation,  
33 rules for the conduct of research and requires the research to be  
34 first reviewed by the appropriate institutional review board or  
35 boards. The rules shall include, but need not be limited to, the  
36 requirement that all researchers shall sign an oath of  
37 confidentiality as follows:

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39  
40  

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Date

1 As a condition of doing research concerning persons who have  
2 received services from \_\_\_\_ (fill in the facility, agency or person),  
3 I, \_\_\_\_, agree to obtain the prior informed consent of persons who  
4 have received services to the maximum degree possible as  
5 determined by the appropriate institutional review board or boards  
6 for protection of human subjects reviewing my research, and I  
7 further agree not to divulge any information obtained in the course  
8 of research to unauthorized persons, and not to publish or  
9 otherwise make public any information regarding persons who  
10 have received services so that the person who received services is  
11 identifiable.

12 I recognize that the unauthorized release of confidential  
13 information may make me subject to a civil action under  
14 provisions of the Welfare and Institutions Code.

15  
16 (f) To the courts, as necessary to the administration of justice.

17 (g) To governmental law enforcement agencies as needed for  
18 the protection of federal and state elective constitutional officers  
19 and their families.

20 (h) To the Committee on Senate Rules or the Committee on  
21 Assembly Rules for the purposes of legislative investigation  
22 authorized by the committee.

23 (i) If the recipient of services who applies for life or disability  
24 insurance designates in writing the insurer to which records or  
25 information may be disclosed.

26 (j) To the attorney for the patient in any and all proceedings  
27 upon presentation of a release of information signed by the patient,  
28 except that when the patient is unable to sign the release, the staff  
29 of the facility, upon satisfying itself of the identity of the attorney,  
30 and of the fact that the attorney does represent the interests of the  
31 patient, may release all information and records relating to the  
32 patient except that nothing in this article shall be construed to  
33 compel a physician, psychologist, social worker, nurse, attorney,  
34 or other professional person to reveal information that has been  
35 given to him or her in confidence by members of a patient's family.

36 (k) Upon written agreement by a person previously confined in  
37 or otherwise treated by a facility, the professional person in charge  
38 of the facility or his or her designee may release any information,  
39 except information that has been given in confidence by members  
40 of the person's family, requested by a probation officer charged



1 with the evaluation of the person after his or her conviction of a  
2 crime if the professional person in charge of the facility determines  
3 that the information is relevant to the evaluation. The agreement  
4 shall only be operative until sentence is passed on the crime of  
5 which the person was convicted. The confidential information  
6 released pursuant to this subdivision shall be transmitted to the  
7 court separately from the probation report and shall not be placed  
8 in the probation report. The confidential information shall remain  
9 confidential except for purposes of sentencing. After sentencing,  
10 the confidential information shall be sealed.

11 (l) Between persons who are trained and qualified to serve on  
12 “multidisciplinary personnel” teams pursuant to subdivision (d)  
13 of Section 18951. The information and records sought to be  
14 disclosed shall be relevant to the prevention, identification,  
15 management, or treatment of an abused child and his or her parents  
16 pursuant to Chapter 11 (commencing with Section 18950) of Part  
17 6 of Division 9.

18 (m) To county patients’ rights advocates who have been given  
19 knowing voluntary authorization by a client or a guardian ad litem.  
20 The client or guardian ad litem, whoever entered into the  
21 agreement, may revoke the authorization at any time, either in  
22 writing or by oral declaration to an approved advocate.

23 (n) To a committee established in compliance with Sections  
24 4070 and 5624.

25 (o) In providing information as described in Section 7325.5.  
26 Nothing in this subdivision shall permit the release of any  
27 information other than that described in Section 7325.5.

28 (p) To the county mental health director or the director’s  
29 designee, or to a law enforcement officer, or to the person  
30 designated by a law enforcement agency, pursuant to Sections  
31 5152.1 and 5250.1.

32 (q) If the patient gives his or her consent, information  
33 specifically pertaining to the existence of genetically  
34 handicapping conditions, as defined in Section 341.5 of the Health  
35 and Safety Code, may be released to qualified professional persons  
36 for purposes of genetic counseling for blood relatives upon request  
37 of the blood relative. For purposes of this subdivision, “qualified  
38 professional persons” means those persons with the qualifications  
39 necessary to carry out the genetic counseling duties under this  
40 subdivision as determined by the genetic disease unit established



1 in the State Department of Health Services under Section 309 of  
2 the Health and Safety Code. If the patient does not respond or  
3 cannot respond to a request for permission to release information  
4 pursuant to this subdivision after reasonable attempts have been  
5 made over a two-week period to get a response, the information  
6 may be released upon request of the blood relative.

7 (r) When the patient, in the opinion of his or her  
8 psychotherapist, presents a serious danger of violence to a  
9 reasonably foreseeable victim or victims, then any of the  
10 information or records specified in this section may be released to  
11 that person or persons and to law enforcement agencies as the  
12 psychotherapist determines is needed for the protection of that  
13 person or persons. For purposes of this subdivision,  
14 “psychotherapist” means anyone so defined within Section 1010  
15 of the Evidence Code.

16 (s) To persons serving on an interagency case management  
17 council established in compliance with Section 5606.6 to the  
18 extent necessary to perform its duties. This council shall attempt  
19 to obtain the consent of the client. If this consent is not given by  
20 the client, the council shall justify in the client’s chart why these  
21 records are necessary for the work of the council.

22 (t) (1) To the designated officer of an emergency response  
23 employee, and from that designated officer to an emergency  
24 response employee regarding possible exposure to HIV or AIDS,  
25 but only to the extent necessary to comply with provisions of the  
26 Ryan White Comprehensive AIDS Resources Emergency Act of  
27 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

28 (2) For purposes of this subdivision, “designated officer” and  
29 “emergency response employee” have the same meaning as these  
30 terms are used in the Ryan White Comprehensive AIDS Resources  
31 Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

32 (3) The designated officer shall be subject to the confidentiality  
33 requirements specified in Section 120980, and may be personally  
34 liable for unauthorized release of any identifying information  
35 about the HIV results. Further, the designated officer shall inform  
36 the exposed emergency response employee that the employee is  
37 also subject to the confidentiality requirements specified in  
38 Section 120980, and may be personally liable for unauthorized  
39 release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

SEC. 10. Section 5332 of the Welfare and Institutions Code is amended to read:

5332. (a) Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person

subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall only be administered when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When any person is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, the agency or facility providing the treatment shall acquire his or her medication history.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

SEC. 11. Section 14021.8 is added to the Welfare and Institutions Code, to read:

14021.8. The department may not utilize any information regarding whether a beneficiary's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for Medi-Cal claim reimbursement.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime

1 or infraction, eliminates a crime or infraction, or changes the  
2 penalty for a crime or infraction, within the meaning of Section  
3 17556 of the Government Code, or changes the definition of a  
4 crime within the meaning of Section 6 of Article XIII B of the  
5 California Constitution.

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